

*No final*  
**FILMED**

BEFORE THE DEPARTMENT  
OF  
NATURAL RESOURCES AND CONSERVATION APR 5 1980

IN THE MATTER OF APPLICATION  
FOR BENEFICIAL WATER USE PERMIT,  
NO. 1437-s42KJ, by EVA SWART

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Pursuant to the Montana Water Use Act, Section 89-865, et seq., R.C.M. 1947 and after due notice a hearing was held on September 25, 1974, Forsyth, Montana for the purpose of hearing objections to the above-named application. The following proposed findings of fact, conclusions of law and order are this Hearing Examiner's recommendations to the Administrator, Division of Water Resources of the Department as a result of the hearing.

PROPOSED FINDING OF FACTS

On January 30, 1974 at 1:09 p.m. an application for beneficial water use permit was received by the Department, to appropriate two acre feet of water in a pit in an unnamed tributary of Lone Tree Creek which is a tributary of Sand Creek for the purpose of watering livestock. In the application, the proposed point of diversion was given as the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 14, Township 8 N, Range 42 E in Rosebud County. A site survey performed by Jim Rehbein of the Department determined that the actual point of diversion was the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 14, Township 8 N, Range 42 E, in Rosebud County. Upon examination of the site of the proposed diversion, Mr. Rehbein determined that there was an existing reservoir 100 yards down the coulee from the proposed point of diversion. At the hearing, the applicant, Eva Swart, testified that she did have an existing reservoir 100 yards down the coulee from the proposed point of diversion, but that this reservoir was silted in.

PROPOSED CONCLUSIONS OF LAW

Because the applicant has an existing reservoir in the same coulee as the proposed point of diversion, the above matter should be considered an application to change the point of diversion and the applicant should be requested to withdraw the application for beneficial water use permit and resubmit an application for approval of a proposed change of diversion.

PROPOSED ORDER

The applicant should be requested to withdraw her application for beneficial water use permit No. 1437-s42KJ and should be sent forms to file a declaration of an existing right and make application for approval to change the point of diversion,

after which the above matter should be dismissed.

NOTICE: This is a proposed Order and will become final when accepted by the Administrator, Division of Water Resources, Department of Natural Resources and Conservation. Pursuant to Section 82-4212, R.C.M. 1947, and Rule MAC 1-1.6 (2)-P6190 written exceptions to this proposed order shall be filed with the Administrator, within five (5) days of service of this proposed order upon the parties herein. Upon receipt of any written exceptions opportunity will be afforded to file briefs and make oral arguments before the Administrator.

Dated this 20 day of October, 1974.

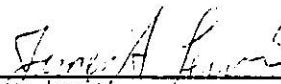
  
\_\_\_\_\_  
James Lewis  
Hearing Examiner

EXHIBIT "A"  
STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

IN THE MATTER OF APPLICATION  
FOR BENEFICIAL WATER USE  
PERMIT NO. 1438-s42KJ,  
BY EVA SWART

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on October 29, 1974, by the Hearing Examiner, are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

The Provisional Permit is granted for 4.4 acre-feet of water per year, to be impounded in a 10-acre-foot reservoir for stock-watering purposes, subject to all prior existing water rights in the source of supply, and contingent upon installation of a drainage device at least 12 inches in diameter in the bottom of the dam within two years of the date of this order.

Done this twenty-seventh day of May, 1975.

*Erin Ferris*

Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

NOTICE: Section 89-8-100, R.C.M. 1947, provides that a person who is aggrieved by a final decision of the Department is entitled to a hearing before the Board of Natural Resources and Conservation. A person desiring a hearing before the Board pursuant to this section must notify the Department in writing within ten (10) days of the final decision.

Address: Department of Natural Resources and Conservation  
Natural Resources Building  
32 South Ewing  
Helena, MT 59601

**CASE # 1438**